

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **JOINT SELECT COMMITTEE ON DISTRICTING AND APPORTIONMENT**

**Call to Order:** By **CHAIRMAN GREGORY D. BARKUS**, on January 21, 2003 at 3:20 P.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Gregory D. Barkus, Chairman (R)  
Rep. Debby Barrett, Vice Chairman (R)  
Rep. Joey Jayne (D)  
Rep. Michael Lange (R)  
Sen. Gerald Pease (D)  
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Prudence Gildroy, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Video-Taped Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

**Committee Business Summary:**

Hearing & Date Posted: Districting and Apportionment,  
1/18/2003

**CHAIRMAN GREGORY BARKUS** called the meeting to order and recognized **REP. DOUG MOOD**.

**REP. MOOD, HD 38, Seeley Lake** advised there was concern on the floor of the House about the limited public testimony the previous day. He testified about what he felt were the most egregious examples of violations of mandatory and discretionary

criteria. HD 25 contained all or part of 7 counties. A trip of 270 miles is required to travel from Circle to Alzada. In order to get from Circle to Alzada it is necessary to leave the district--a violation of criteria #2 (compact and contiguous). Circle, the county seat of McCone County is the only town in McCone County drawn into HD 25 and the rest of the county is in HD 20--violating discretionary criteria #3 (communities of common interest). HD 71 and HD 72 violate discretionary criteria #1 (political unity). These two districts now divide the county of Deer Lodge, of which the county seat is Anaconda, exactly in half even though that county contains fewer than 9022 people. It is possible with this division for two representatives and a senator to live within one block of each other in the town of Anaconda and to represent an area that encompasses some 3 counties. SD 47, in the northwestern part of the state and SD 14 in the southeastern part of the state represent the largest population deviation of any two senate districts in the current proposed redistricting. SD 47 has almost 1800 fewer people living in it than SD 14. HD 55 and 64 violate the mandatory criteria of population deviation; they represent the largest population deviation within house districts. HD 55 has almost 880 more people living within its boundaries than HD 64. Although allowed under current law, it is unfair to voters of either district regardless of the political anticipation of how the district is going to vote. HD 14, 20, 25 and 41, varying from the northwestern part of the state to the northern to the eastern part of the state, violate discretionary criteria #1--political unity. HD 14, 20, 25 and 41 are districts where two incumbent Republican legislators must run against each other. He was not aware of any Democrat districts where that is the case. HD 6 is former HD 58, the district he currently represents. HD 58 has been divided into 5 different segments that go in 3 different directions. The part of his district which is northern Powell County and contains the town of Ovando is now paired across the continental divide with Augusta. Helmville, just south of Ovando about 15 miles in Powell County, is now paired with a district in the Eastern side of Helena. Granite County is now paired with southern Anaconda. Previously, Anaconda was paired with Powell and part of Missoula County. The northeastern part of Missoula County which was part of his district and contains his home town is now paired with the Rattlesnake Canyon area in the town of Missoula and the southeastern part of Missoula County runs over to the canyon and is paired with a suburban area that is between Lolo and Florence. After running in this district for four different cycles, he knew the people of the district extremely well. He felt badly about the way they have been divided. There was some unity that existed in the district that has been completely destroyed.

**SEN. DAN MCGEE, SD 11, Billings**, expressed confusion with regard to this districting cycle. Under the Montana and US Constitution, and *Shaw v. Reno*, race cannot be a predominant factor in traditional discretionary criteria. He found it interesting that **Commissioner Lamson** testified the process began in the Blackfoot Reservation and then combined portions of the Salish-Kootenai. He noted previous testimony had honored **Rev. Martin Luther King**. He said it was **King** who "had a dream" about a time when a man would not be judged by the color of his skin, but by the content of his character. It seemed to him there was a fatal flaw in this whole design in that it attempted to segregate Indian populations initially. From there, which he considered to be bad, it went worse. He advised that SD 1 violates mandatory criteria #4--race a dominant factor. The total Native American population for SD 1 nearly doubled from about 30% in 1990 to 60% in 2000. He believed it violates discretionary criteria #1--political unity. The Salish-Kootenai and Blackfoot Indian Tribes operate under different governments. Ronan is no longer one voting block. Pablo is no longer one voting block. He believed it violates discretionary criteria #2--geographic boundaries. SD 1 travels over the continental divide to get from Arlee to Browning. On existing roads one needs to travel 180 miles outside of the district. He believed it violates discretionary criteria #3--communities of common interest. Native American communities in Pablo and in East Glacier have few economic similarities. Voters in Pablo depend on Flathead Lake for recreation, tourism and cultural heritage whereas voters in East Glacier rely upon Glacier Park. St. Ignatius, in the heart of the Salish-Kootenai Reservation is separated from the rest of the reservation. SD 9 violates mandatory criteria #2--compact and contiguous. He noted that **Commissioner Lamson** testified SD 22 was originally designed by the 1980 Commission. That was not accepted as being the district. There is a 25-mile area of continuity between the two house districts and a huge area in HD 18 versus the long, slender four-mile, almost 100 mile long area in SD 22. He believed it violated mandatory criteria #4--race a dominant factor. It includes the Rocky Boy and Fort Peck Indian Reservations even though they are 160 miles apart. Ninety-eight house districts are nearer than 169 miles from each other. It encompasses only the most populous areas of the Fort Peck Reservation thus ignoring the more Caucasian voters in northern Valley and Roosevelt Counties--discrimination in his mind's eye. He believed it violates discretionary criteria #1--political unity. It ignores the Fort Peck Reservation Boundaries and consists of portions of six counties. It violates discretionary criteria #3--communities of common interest. There are cultural and social differences between the Assiniboine Sioux and the Chippewa Cree Indians. Media markets on the western end are from Havre/Great

Falls and on the eastern end are from Sidney, Glasgow and North Dakota. SD 11 violates mandatory criteria #2--compact and contiguous. It is 270 miles long--almost half the length of the state. He believed it violates discretionary criteria #1--political unity. It includes all or part of six counties and disregards the voting precincts in Choteau County violating discretionary criteria #3--communities of common interest. The city limits of Fort Benton are skirted so that people who live in Fort Benton are paired with those voters 270 miles away. Lewistown is divided into 2 house districts. The economic similarities between large communities within the district vary from Sidney to Glasgow to Miles City to Lewistown to Great Falls. SD 35 runs from Helmville to Lavina, violating mandatory criteria #2--compact and contiguous. It is 225 miles long east and west and includes all or portions of 6 counties. He believed it violated discretionary criteria #3--communities of common interest. Transportation, markets, media markets, communication, social, occupational, urban and rural interests have all been violated. SD 18 violates discretionary criteria #1--political unity. Current sitting **SEN. BRENT CROMLEY**, is assumed as the holdover legislator and 97% of the people he would represent have not had the opportunity to vote for him. HD 49 in Wheatland and Meagher County violates mandatory criteria #2--compact and contiguous. It consists of portions of 5 counties--more than any other district. The towns within the district include York to just outside Ryegate. The travel, transportation and communication within the district is very difficult. HD 37 and 38 are approximately 5 blocks wide and 3-4 miles long. The south side of Billings is the largest non-reservation minority group in the state. According to the plan, it has been broken into four house districts. He believed that violates common interest and the other two violate compact and contiguous. They are contiguous as a string is contiguous from one end to the other, he held. Billings has 100,000 people and compact and contiguous has not been achieved.

**REP. RON ERICKSON, HD 64 Missoula**, supported the plan. He advised his current district has downtown apartments, a high school and a grade school. It goes up into the hill and around the mountain into Miller Creek and some pretty rural areas. He discovered a common interest in that group. His district has been divided up into three other districts. He got to know the people in his district in the last four years walking door to door. He talked to everyone in his district often four times. Suddenly, he will have a partially new district. It was his guess that he would probably run in HD 80. It has four and one-half of the eight precincts he had before. He advised that was the way most legislators first looked at the plan--what it would do to them. He was not worried about meeting new people or about the fact that his district would be long and narrow. Every

Missoula Democrat legislator has a more difficult district than they had before because they are moving into the kind of district that he has been representing in the past--a district that is mixed. He thought it good that Missoula would be more competitive than in the past. He said he wished that he had exactly the same district he had before, if talking about it personally, but in thinking about common interest, the new districts will work in Missoula. It's a good plan, he held.

**REP. CAROL JUNEAU, HD 85, Browning,** submitted a letter from the Blackfeet Nation in support of the plan. **EXHIBIT(jdh12a01)** In terms of **SEN. MCGEE'S** comments that there is nothing in common from the Blackfeet Reservation to the Salish Reservation and said that the Flathead had a lake, she said they too have lakes that they fish and boat in. She advised the famous Duck Lake is on their reservation where many people travel to from around the world the same as to the Flathead. They do have common interests. Many of the tribal leaders had spoken at the hearings on the communities of interest between tribal groups. She advised she was a member of the Mandan Udaasa Tribe of Fort Berthel Reservation in North Dakota. She did not recall knowing an Indian in a leadership position as she grew up other than in tribal government. She thought that was probably the same throughout the country. Indian people were not made citizens until 1924. After WWI it was declared that Indians had successfully passed the assimilation test during wartime and thus deserved the rewards of citizenship. Dr. Joseph Dixon, who was an active proponent of assimilation at the time, said "The Indian, though a man without a country, the Indian who has suffered a thousand wrongs considered the white man's burden and from mountains, plains and divides the Indian threw himself into the struggle to help throttle the unthinkable tyranny of the Hun. The Indian helped free Belgium. Helped to free the small nations. Helped give victory to the stars and the stripes. The Indian went to France to help avenge the ravages of autocracy. Now shall we not redeem ourselves by redeeming all the tribes." So in 1924 the Indian citizenship act was passed. It says, "Be it enacted by the Senate and the House of Representatives of America in Congress assembled that all non-citizen Indians born within the territorial limits of the United States be and they are hereby declared to be citizens of the United States provided that granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property." **{Tape: 1; Side: B}** This journey for political rights didn't end with the Citizenship Act of 1924. Many states were not prepared for Indians to vote. It was about the middle of the 20th Century when the last three states--Maine, Arizona and New Mexico--finally granted the Indian the right to vote in their states. She talked to her friend **Bob Jarvis** from Browning,

Montana, who served in the Korean War. He came home at 21 years of age and could register to vote. He went to vote in a school board election and he was turned away.

**CHAIRMAN BARKUS** asked **REP. JUNEAU** to address the redistricting plan.

**REP. JUNEAU** replied that she was sure that's what she was doing.

**CHAIRMAN BARKUS** advised that there were a lot of people lined up to testify; testimony would have to be limited if not more brief.

**REP. JUNEAU** reasoned that they had not therefore always had the right to vote. Since 1889 when Montana became a state, about 8,700 legislators have served. Of these, only 80 positions had been filled by Indians--less than 1%. Indian people are the first people of the state of Montana. They are the last in getting the opportunity to have equitable representation in the Montana legislature. She advised that Indians need the right to fully participate in the political process. She urged accepting the plan that was submitted. It is fair, and it is time, she held.

**REP. TIM DOWELL, HD 78, Kalispell**, addressed HD 93. He shares his district with **SEN. BARKUS**. The majority of the district has small lots and older homes. Many of the homes were built at the turn of the century. The portion that will no longer be part of the district has suburban houses--a very different area than the addition to the district which is the area north of Highway 2. That is a very similar area to the existing part of HD 78. He gave strong support to the new formation of the new house district 93 because it truly represents a similar type of living condition; they are all considered citizens of Kalispell.

**SEN. RICK LAIBLE, SD 30, Victor**, submitted written testimony.

**EXHIBIT** (jdh12a02)

**REP. JEFF LASZLOFFY, HD 22, Laurel**, addressed HD 43 and 44. Proposed HD 44 is his current House district 22 and for the most part the redistricting committee left that district intact. They carved a portion out of the eastern side of that district that was mainly Republican and added it to proposed district 44. He stated **Commissioner Pretty on Top** testified the Commission had to keep in mind the changing nature of the state especially when dealing with the large eastern districts. He submitted they should not have done what they did in HD 43. In many districts in the east and in the west, they created super districts--large districts that deviate from the ideal population by almost 5% in those areas that are most rapidly growing. At the end of the

next redistricting cycle in ten years, the disparity in those districts will be huge. If the Commission wanted to be truly fair, they should have held back on the deviation to the negative side in those districts where the population is growing most rapidly and those districts in turn would have migrated more closely to the real deviation rather than going to the extreme and becoming more positive. The difference in deviation between HD 43 and HD 44 is almost 8%. There was no reason other than being partisan to carve the Republicans off of the east side of HD 44 and add those to HD 43. HD 43 has a positive 4.53% and HD 44 has a negative 3.11%. He pointed out that HD 43 completely violates criteria #3--communities of common interest. They've taken two different communities of interest, one being the Yellowstone Country Club, and added that to rural agriculture and the city of Joliet. Those two communities have nothing in common other than it created a super Republican district.

**REP. ROY BROWN, HD 14, Billings** read his written testimony and submitted testimony from other legislators. **EXHIBIT(jdh12a03)**

**REP. JON PARKER, HD 45, Great Falls**, supported the plan. He advised the plan makes sense for Cascade County. Under the proposed plan, every person living within the boundaries of Cascade County would be represented by an individual from the same county. In addition, HD 45 would largely become HD 11 under the proposed plan. It is compact and contiguous and the population deviation falls within 5%. It is bounded on one side by a geographic feature, the Missouri River. The people that would be added to the district share a number of interests. They are strongly in favor of public education and favor funding of programs that fulfill human needs in the social services sector.

**REP. CAROL LAMBERT, HD 1, Hammond**, spoke against the plan. Her district used to consist of Powder River, Carter, Fallon and part of Wibaux County. They have put Glendive and Wibaux together, made a whole new district out of it and doubled her district or put it in with **REP. RONALD DEVLIN'S** district so it is twice the size in a corner of the state important to our state's economy. They took away representation in that area. The plan is discriminatory, she held. One representative should not have to take care of an area that large and it is not fair to pit one representative against another.

**REP. NORMA BIXBY, HD 5, Lame Deer**, advised that **Susan Fox, Legislative Research**, visited the reservation and presented some maps. One map was okay. Another map was close but included a county she did not care to represent. She wanted to go more north towards Colstrip. Because they were one of the counties that lost population, it was not possible to find people in the

district without going in all these different directions. She notified the Commission and they made some changes in her district. There are two reservations in her district--Northern Cheyenne and Crow. She did not think race plays into the situation at all. It was one thing the Commission could not take into consideration even in view of the voting rights act. People insult the intelligence of Indian people to be independent thinkers, she stated. "You think we're going to vote democrat. History shows that is not true." Indian people voted against former **SEN. JOHN MELCHER** and for **SEN. CONRAD BURNS** and former **Governor Mark Racicot**. Indian people will vote for who they feel will best represent them. That has happened in her district. **Marian Hansen** always got the Indian vote. **Lila Taylor** always got the Indian vote. She ran against two Northern Cheyennes and one non-Indian who came from their district. They lost. She lost her race because Lila Taylor came on the Reservation and talked to people. The second time she ran she took the Indian vote for granted and she did not come to visit the people on the Northern Cheyenne. Her last opponent didn't bother to come either. Race is not a question. There is the possibility with this plan of other Indians getting into the legislature but its not a free ride. She implored the committee to give the Indian people some credit for knowing what's going on in this state and who will represent them best. **EXHIBIT (jdh12a04)**

**REP. SUE DICKENSON, HD 47, Great Falls** supported the proposed plan 300. It changed her legislative district--it removed two primarily rural precincts and added another portion of Great Falls which is on the same side of the river and is very similar in makeup. In this respect, she thought the plan follows the guideline of communities of interest. It was not pleasant to lose the rural precincts. The difference in percentage in the new plan is about 2% deviation. She recommended approval of the plan.

**SEN. KEN HANSON, SD 46, Harlem**, congratulated the Commission for taking on such a task. He advised it is a proud day for the Indian people. They will have a chance now to shape Montana's history, and the future of their children and their children's children. His Senate district encompasses the Fort Belknap and Rocky Boy Reservations. He vowed to represent the people in SD 46 to the best of his ability. Even though he has lived among them, he still does not totally understand all the Native American issues. Blaine County elected their first female Native American county commissioner, he noted. He urged support for the plan.

**REP. JOHN MUSGROVE, HD 91, Havre**, testified he hoped to be able to represent HD 16 in two years. One of the strongest democratic precincts in his district is moved out and under the new plan he



will have a much more Republican precinct. With the expansion of HD 16, the northern half of Blaine County is much more conservative than he is and he will have to work hard for reelection. If the 1% solution is viable, why there was no model prior to the hearing, he wondered. It should have been put on the table early on, he felt. The minority section on the Commission could have done that--they had time available. He endorsed what the Commission has done. He presented written testimony from a Liberty County Commissioner. **EXHIBIT(jdh12a05)**

**{Tape: 2; Side: A}**

**SEN. TRUDI SCHMIDT, SD 21, Great Falls,** expressed appreciation for the effort of the committee to be fair. In her new senate district she will represent a diverse group of people. She felt it was important for a legislator to represent different income groups and others and she looked forward to doing that. She read a letter from **Mary Sexton, Teton County Commissioner,** who attended the previous hearing but was unable to present her testimony. **EXHIBIT(jdh12a06)**

**REP. MONICA LINDEEN, HD 7, Huntley,** testified that when her house district was created ten years ago, it was a swing district. In the new plan, it is still a swing district. Anyone has a more than fair chance of winning. She supported Forsyth being brought back into the district in Rosebud County. Ten years ago it was taken out of the district. Forsyth and the community of Colstrip are intricately tied as communities of interest. When the plan was originally put together, Treasure County, with only about 900 people in the entire county, was split in half. The county commissioners there were extremely concerned. They came to the Commission, expressed their concerns and the Commission made an amendment to make Treasure County whole. Another change included people south of Huntley on the Prairie Road who were taken out of the district ten years ago. Those voters felt they did not have anything in common with Lockwood and the Billings community. The Commission was able to bring about half of those people back into the district. In districts with multiple counties with multiple interests, it is sometimes hard to make everybody happy, she reasoned.

**REP. JONATHAN WINDY BOY, HD 92, Box Elder,** spoke in his native language. He advised that there was a race of people here before the landing of the Mayflower. They were people who lived on this island for centuries before. The democratic system that we live by today, the Constitution, is based upon the very same constitution of the democracy of the Six Nations--people in the state of New York. In that democracy there were many laws and what they call unwritten law--given to his people by a Supreme Being. He advised there was a word he had been hearing in the

last month called gerrymandering. He referred to HB 309. Ten years ago, **Commissioner Jack Rehburg** made a motion for a 5% plus or minus deviation and we lived by that for ten years, he stated. Ten years later, the 5% deviation does not work for the majority party--maybe because of loss of power. Whatever the reason, every time we go out to the playground as bullies, when we play with our playmates, we make up rules and when the rules don't go in our favor, we change those rules, he contended. HB 309 will become law before February 4th, he warned. That will be a gross violation of the Constitution. He stated he had learned many things in his 44 years living on this earth. Twenty years ago, he never thought he'd see the day of walking the halls representing his people. He speculated with his testimony today, nine bills he introduced will probably never become law, but at least he would keep his promise that his people would have a strong voice.

**SEN. DUANE GRIMES, SD 20, Clancy**, stated it was an honor to follow **REP. WINDY BOY** and he wished he could have understood parts of his very eloquent and beautiful opening. He noted they shared some things in common--a concern for correct application of the Constitution. He disagreed on how it has been applied. He cited an NCSL book called *Redistricting Law 2000* which he felt would be helpful in weighing the issues. In a subsequent line of cases after *Shaw v. Reno* the Supreme Court indicated clearly that race cannot be a dominant factor to the exclusion of discretionary criteria. "Although the Supreme Court has held several redistricting plans unconstitutional, the Court has made it clear that race conscious redistricting is not always unconstitutional. The court has said that if a minority district were created through a process that adhered to traditional districting principles such as compactness, contiguousness, respect for political subdivisions, and maintaining communities of interest and other race neutral criteria such as incumbent protection, the plan will not be found to purposely distinguish between voters on the basis of race and would not be held unconstitutional. If those things were proven to be true, then it clearly could be found to be unconstitutional." Subsequently the book went on to say that in *Miller v. Johnson*, "...a plaintiff must prove that the legislature in order to prove that something unconstitutional occurred; a plaintiff must prove that the legislature subordinated traditional race neutral districting principles including but not limited to compactness...to racial considerations. Where these or other race neutral considerations are the basis for redistricting legislation and are not subordinated to race, the state can defeat a claim that a district has been basically contorted for those reasons." **Justice Sandra Day O'Connor** in *Shaw v. Reno* held that "the allegation that North Carolina's redistricting legislation was so extremely

irregular on its face that it could be rationally viewed not only as an effort to segregate races for the purposes of voting without regard to traditional redistricting principles and without sufficient compelling justification was sufficient to state claim upon which relief could be granted." In plan 300, there are very narrow districts conjoining two geographically disparate districts and because of that there is a very strong case for questioning the constitutionality of the plan. Witnesses would need to show that there was not community of interest or compactness. He felt there was an exclusion of normal discretionary criteria in the plan. He expressed concern about the communities of interest in his own district particularly with Broadwater County and Gallatin Valley. According to *The Realist's Guide to Redistricting--Avoiding the Legal Pitfalls*, published by the American Bar Association in 2000, districting plans need to comply with Article 1 Section II of the US Constitution. He restated that the plan was unconstitutional according to the *Shaw v. Reno* case and the subsequent line of cases.

**SEN. JOHN BOHLINGER, SD 7, Billings,** testified that he had been a part of the legislative process for ten years. He was first elected in 1992 in what was then HD 94 which subsequently became HD 14. He served 6 years in the House and in 1998 ran for SD 7 which includes both HD 13 and 14. One of things he likes best about his district is the diversity. It is one of the most ethnically diverse districts in the state of Montana as well as an economically diverse district. He grew up there and has an understanding for the district. He loves representing these people. The folks that elected him to the Senate in 1998 reelected him for another 4 year term with the full expectation that he would represent their interests before the Montana Senate. Under this plan, he would not be able to do that in two years because his district will be moved to the west side of town. The people on the west side didn't elect him; the people in the north and south side of the old part of Billings elected him. He felt those that cast their votes for him will not have representation or certainly not the representation they expected. He appreciated efforts to bring racial diversity to the legislature. He felt that each of the 100 House districts are rather unique and the people they elect are unique. They are a reflection of the district that elects them. He found fault in the way SD 7 has been divided and urged some examination of the plan on that basis.

**REP. VERONICA SMALL EASTMAN, HD 6,** noted her grandfather was a Texan who came to Montana on a cattle drive. Her great-grandfather came from Juarez, Mexico on a cattle drive. They both settled on the Northern Cheyenne Reservation. She considers

herself an "all American kid". Her mother always said that whenever people attack you it makes you stronger. The Commission followed all the mandatory criteria set forth by the Montana Constitution, the US Constitution, and the Montana and US Supreme Court cases including *Shaw v. Reno*. The mandatory criteria of population equality is fully complied with by this Commission and by this plan, she held. This plan uses a plus or minus 5% population deviation to keep communities, neighbors and friends together, she stated. It is the exact same population deviation that most states use and prior commissions have used. The population of the state of Montana in the 2000 census is 902,195. For the House districts that's 9022 people per district and for the Senate districts its 18,044. Of this 902,195 people in Montana, Native Americans comprise 7%. The courts have ruled that if a district is within the 5% population deviation, it is presumed to be constitutional and in compliance with the 14th Amendment--one person one vote provision. She felt the impact of going to 1% would result in splitting more small towns and communities that have similar interest. Each of the districts are contiguous and compact. The Commission has been very successful at keeping communities together. Compactness of these districts can pass the visual appearance test. They are compact when weighing the ease of travel, similar economies and communities. Plan 300 protects the minority voting right and is in compliance with the voting rights act. Native Americans, the first people of Montana, were deprived of the right to vote until 1924. It has not been until just recently that some gains have been made with legislative representation. Native Americans as well as other minorities in Montana are entitled to have a chance to elect legislators of their choice **{Tape: 2; Side: B}** whether Republican or Democrat. This is the fundamental premise of a just and fair democracy. This is why the Voting Rights Act was created and why minority groups throughout the United States have fought so long and hard to have their voices heard. Montana is largely a white state with community ties and community similarities. Montana's minority population have close community ties and similarities as well. They share a common heritage, economies, family, education, leaders, challenges and future just as the predominant society. Yet it is these ties that bind these districts, not the race. For example, she advised, it would be like saying that the most southeastern districts were drawn because the majority of people who live there are white--not taking into consideration their similar communities, shared economies, travel, and geography. She inquired if it was being asserted the Commission plan was based solely on race. She felt that was stirring the pot to foster historic racism and continued discrimination. To be fair and equal, the committee should be made up of three non-Indians and three minorities. She complained about the remarks of **SEN. BOB KEENAN, REP. ROY BROWN,**

and **SEN. FRED THOMAS** about the "Native American" district on the Fort Peck Reservation, calling it the "muskrat area". These three men have publicly criticized the three proposed Indian majority Senate districts, she stated. Census figures show that for Indian citizens to have representation in keeping with their numbers there should be three Indian majority districts in the Senate and seven in the House. She wondered how to create those three Senate districts without using the plan. The 1990 Commission was a Republican dominated Commission that drew boundaries in favor of Republicans. However, the current Commission, deserves the highest praise for balancing Constitutional and court limitations and mandates with the ideas and concerns of Montanans--all Montanans. They have put forth a plan that has received favorable testimony and is on rock solid legal ground. The plan would bring us together and move Montana forward. Therefore, don't be afraid of change, she advised the committee--accept the plan from the Montana Redistricting Commission.

**SEN. MIKE COONEY, SD 26, Helena,** advised he looked at the proposal and felt his new district reflects greater community interest. The interest of the district does not merely stop at the city line. It extends past that--it is a very diverse district as is the current district. It extends from the city of Helena out to the valley similar to what the old district does. He found it interesting that the House districts proposed in that area reflect the same thing. He felt it recognizes commonality and not differences. During his campaign, he talked to people about the possibility that if they elected him, there was a good chance depending upon how the lines were drawn that they would have a different senator in two years. Nobody expressed great heartburn over that. He felt the issue needed to be kept in perspective. If the lines are drawn correctly, as he believed they are, we will be a community of one as Montanans and the members of the legislature will be able to do the job regardless of who ultimately voted for them. Every ten years there is the possibility and likelihood that those lines are going to change. He urged adopting the plan as presented and getting on with the more important business at hand.

**SEN. ED BUTCHER, SD 47, Winifred,** observed that as a former professor of political history, he taught about gerrymandering but never before quite witnessed it to this level. He was intrigued by the incredible violation of some of the real core issues--the biggest being continuity and the sense of community. His district stretches beyond most states in size with no sense of community at all--in fact his seat will be lost. The people in Circle have as much in common with the people in Lewistown as someone in North Dakota would. The Senator that has been given his district, at least for a couple of years, is going to be in

the furthest corner of the district, having absolutely nothing in common with most of his district. People in Circle representing people in Big Sandy is almost humorous if it wasn't sad, he held. As a professor of political history, he would have laughed if somebody had proposed that there would be that level of gerrymandering done in a redistricting. He was not sure what could be done, and almost didn't come to register any comments, but felt there was a very flawed system. When race becomes the overwhelming reason for drawing lines, it is a disservice to the entire population of the state of Montana. He strongly felt the Commission should have followed its constitutional mandate which was to proportion fairly and equitably around community lines and trade areas, which in a state the size of Montana should be one of the paramount considerations.

**SEN. SHERM ANDERSON, SD 28, Deer Lodge**, read from written testimony. **EXHIBIT(jdh12a07)**

**SEN. COREY STAPLETON, SD 10, Billings**, pointed out a needed correction in his district. In Billings proper, there are four districts and five if you count the Heights. **SEN. BOHLINGER'S** concerns are his concern. He was assigned to the district which is predominately **SEN. STAPLETON'S** and partly **SEN. ROYAL JOHNSON'S**. **SEN. BOHLINGER** does not live in the district he is assigned to. The way it has been designed, **SEN. ROYAL JOHNSON** cannot run in the district in which he lives. **SEN. BOHLINGER** does not live in the district he is and **SEN. STAPLETON** cannot run in the district he's in. In the case of Billings proper, those corrections could be made without even redrawing lines. He appealed to **SEN. PEASE** and **REP. JAYNE** to get address a bigger right and wrong. Some of the districts that were made are not compact and contiguous. The true strength of diversity is the ability to address issues such as race and fairness. If the shape of these districts is not one that a child could recognize as a shape, it's not right. He asked that Billings be put together in a way that makes sense to the voters and the people who have run there. He knew that there was precedent and knew there were people in some of the rural Senate districts with the same concerns. He felt that same courtesy could be extended to senators in the cities.

**CHAIRMAN BARKUS**, noted the time as advised testimony would be limited to those legislators standing. He didn't think they would accept any non-legislative testimony.

**SEN. JERRY O'NEIL, SD 42, Columbia Falls**, applauded the creation of the Indian districts. He faulted the plan for drawing Republican districts with greater population than the remaining Democrat districts thus giving the democrats more representation

than Republicans outside of the Indian reservations. In Flathead County, they would lose one or two representatives and maybe one senator. He felt the plan should be redone, keeping the Native American representation; but making the democrat districts 8 to 10% fewer in population than the Republican districts is bad politics.

**SEN. BARKUS** advised they would accept written testimony from non-legislators.

**{Tape: 3; Side: A}**

**SEN. KEITH BALES, SD 1, Otter**, testified that an amendment at the last meeting of the Commission placed him in the district in which he was a holdover Senator. The Commission created house districts and then combined them to make up a senate district. There was not a holdover senator in either SD 14 or SD 13. He lives in the southwestern corner of Powder River County. He asked for an amendment moving his precinct into SD 13 and that was granted. He questioned whether or not they could place a senator in a holdover district in which he did not live if there was not a holdover senator in the district in which he did live. The reason he was placed in that position was the poor job drawing the southeastern Montana house districts. Plan 100 and 200 for southeastern Montana included the counties of Carter, Powder River, Custer and Fallon and followed along county lines with the exclusion of Miles City. There is sufficient population in Miles City to make a separate, contiguous and compact house district. Plan 300 cuts off part of Powder River County, divides Custer County into three separate parts with Miles City being the hub. They divided Custer County into four different House precincts. In Dawson County, they took part of Dawson County and went right up to city of Glendive. They also took a little bit of McCone County and Prairie County and put that into a house district. Plan 100 and 200 were contiguous, compact areas for that district with areas of common interest. They divided up those centers of interest into several house districts and separated Powder River County. He felt the process was flawed from the beginning. A better job could have been done on drawing the districts in southeastern Montana to give it a more contiguous and more centralized center of interest.

**SEN. RICK LAIBLE, SD 30, Victor**, opposed the current redistricting plan based on the criteria on which the plan was to be created. The discretionary criteria which states "communities of interest must be based on trade areas, geographic location, communication, transportation networks, media markets, Indian Reservations, urban and rural interests, social, cultural and economic interest or occupation and lifestyles" appears not to have been considered in the redistricting of new district 73 and

74. To include the western suburbs of Hamilton, the most populated community within Ravalli County, and the northwestern communities of Pinesdale in the new HD 74 does not meet the criteria set forth in the guidelines. In essence, a panhandle was created and the only route was through forest service land. He advised the rationale was political, since those residents living in the western suburbs of Hamilton and the northwestern enclave of Pinesdale historically have been conservative voters. Plan 300 obvious intent within these new districts is to align conservative voters within contrived boundaries together not based on the criteria but on political affiliation. Plan 300 is a shameful attempt to disenfranchise Montana voters from their communities of interest, he held, by political gerrymandering and nothing more. He advised rejecting plan 300 and going back to the original criteria of communities of interest.

**NEIL HAIGHT**, representing himself, presented his written testimony to the secretary. **EXHIBIT (jdh12a08)**

**SEN. CAROLYN SQUIRES, SD 34, Missoula**, testified about the reapportionment ten years ago. She believed there was much of the same conversation then--not as intense or dramatic--but with many of the same accusations. The Republicans then controlled the Reapportionment Commission. She supported plan 300 because she liked new district that she will serve. Each Missoula district includes part of the county. She favored the creation of the Native American districts and commended the Commission.

**SEN. JEFF MANGAN, SD 23, Great Falls**, spoke in support of the plan and advised his new district is SD 5 under the plan. His current district is considered a liberal or democratic district. Under the plan, he loses part of the south side of Great Falls and expands into the upper part of the county which includes Malmstrom Air Force Base, making his district a bit more conservative. He looks forward to serving his constituents wherever they are and whoever they might be. He served in the House with **SEN. PEASE, REP. JUNEAU, REP. EGGERS** and **REP. SMITH**. His seat mate in 2001 was **REP. JAYNE** and **REP. BIXBY** and this year includes **REP. SMALL** AND **REP. WINDY BOY**. He advised he had learned much about the state of Montana and about that culture. The proposed plan addresses Native American representation and in light of the Montana Constitution that is very important. Race should not be made a political issue, he held. He urged support for the plan.

**REP. FRANK SMITH, HD 98, Poplar**, thanked the Districting Committee and **Ms. Fox**. He addressed the issue with HD 11. He felt the Senator was probably worried about competition from a



little town like Circle. He never worried about competition--he never let race or anything enter into his politics. Its always been straight out the service of people. He advised he would not be here without a Republican pushing him. They gave him Fort Peck, which is a good place too, he said. He thought maybe they should all go to Fort Peck for awhile and maybe they'd get together.

**Executive Session:**

**REP. JAYNE** advised that she had written information from constituents and others about this particular hearing.

**EXHIBIT** (jdh12a09)

**REP. BARRETT** advised she had information from 9 representatives who weren't here today.

**Mr. Bob Ream, Montana Democratic Party** stated it was announced on the house floor that a resolution will be drafted and there will be a public hearing on that.

**CHAIRMAN BARKUS** advised that if he knew where this committee was going to go, he guessed they wouldn't have to have any more meetings. At this point they didn't know what the outcome of the committee was going to be. He said they would advise him whenever they came up with the will of the committee.

**Mr. Ream** contended that the process had been very confusing and he had been waiting for two days waiting to testify--they accepted public testimony yesterday but none today.

**CHAIRMAN BARKUS** advised there had been no notice of public testimony anywhere.

**SEN. THOMAS** noted they did take public testimony the previous evening at the end of the hearing for those that were here. Sometimes these things take longer than anyone anticipates and that was the case the previous night. Any resolution that is drafted and brought to the committee will have a public hearing for its consideration.

**CHAIRMAN BARKUS** asked if committee members were aware of the time frame.

**REP. JAYNE** asked him to state the time frame for the record.

**Ms. Fox** advised that the Commission submitted the plan to the legislature on January 6th. There is a 30 day window in which to provide a recommendation to the Commission and February 4th would

be the 30th day. The Commission has 30 days after that to finalize the plan as the law stands at the moment. The recommendation to the Commission should be prepared by February 4th. There is no law as to the form of the recommendation. That is up to the committee.

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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SEN. GREGORY D. BARKUS, Chairman

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PRUDENCE GILDROY, Secretary

GB/PG

**EXHIBIT** (jdh12aad)